

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 ACDA-05 CIAE-00 DODE-00 PM-04

INR-07 NSAE-00 NASA-01 NSC-05 OES-03 OIC-02 SS-15

COME-00 DOTE-00 EB-07 FMC-01 CG-00 OFA-01 DLOS-04

SSO-00 INRE-00 NSCE-00 USIE-00 CCO-00 OTPE-00 FCC-01

OC-05 BIB-01 OMB-01 TRSE-00 AF-06 ARA-06 EA-07 NEA-10

/108 W

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FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 9264

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FOR L/UNA

E.O. 11652: N/A

TAGS: PORG, ETEL, IMCO

SUBJ: INMARSAT CONFERENCE: LIABILITY PROVISIONS

1. COMMITTEE I HAS ADOPTED ARTICLE 26 FOR INCLUSION IN THE CONVENTION (TEXT REPRODUCED PARA 3 BELOW). THE TEXT AS ADOPTED CONTAINS TWO PROVISIONS WHICH WE HAVE REPEATEDLY OPPOSED. PARAS ONE AND TWO INDICATE THAT THE ORGANIZATION SHOULD BE LIABLE FOR ITS ACTS AND OBLIGATIONS AND THAT THE PARTIES SHALL NOT BE SO LIABLE. THE MAJOR REASON FOR THIS PROVISION IS THAT MANY OF THE PARTICIPANTS IN THIS CONFERENCE BELIEVE THAT THE PRINCIPLE IN THE 1967 AND 1972 SPACE TREATIES, THAT IS THE PRINCIPLE THAT THE MEMBERS OF AN INTERNATIONAL ORGANIZATION COULD BE INDIVIDUALLY LIABLE FOR THE ACTS OF THAT ORGANIZATION, IS UNACCEPTABLE AND IS UNNECESSARY IN LIGHT OF THE SUBSTANTIAL CAPITAL OF THIS ORGANIZATION.

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WE HAVE OPPOSED THESE PROVISIONS BOTH ON THE PHILO-

SOPHICAL GROUND THAT IT IS INAPPROPRIATE TO AMEND THE PROVISIONS OF THE EARLIER CONVENTIONS, EVEN AMONG OURSELVES, AND ON THE PRACTICAL GROUND THAT SUCH A PROVISION MIGHT EXPOSE THE US SIGNATORY TO A SUBSTANTIALLY INCREASED RISK OF LAW-SUITS. (FOR EXAMPLE, IF A SPACE OBJECT CRASHED IN MIAMI, THE GOVERNMENTS WOULD BE PRECLUDED FROM CLAIMING AGAINST EACH OTHER AND A DAMAGED PERSON MIGHT BE MORE INCLINED, THEREFORE, TO SUE THE US ENTITY IN ADDITION TO SUING THE ORGANIZATION ITSELF.)

2. WE WOULD APPRECIATE AN IMMEDIATE INDICATION WHETHER OR NOT DEPARTMENT CAN ACCEPT THE PROVISIONS OF PARAS ONE AND TWO IF REPEAT IF THE DELEGATION AGREES THAT THIS SHOULD BE DONE.

3. LIABILITY.

A. THE ORGANIZATION SHALL BEAR LIABILITY FOR ITS ACTS AND OBLIGATIONS.

B. PARTIES ARE NOT, IN THEIR CAPACITY AS SUCH, LIABLE FOR THE ACTS AND OBLIGATIONS OF THE ORGANIZATION, EXCEPT IN RELATION TO NON-PARTIES OR NATURAL OR JURIDICAL PERSONS THEY MIGHT REPRESENT IN SO FAR AS SUCH LIABILITY MAY FOLLOW FROM TREATIES IN FORCE BETWEEN THE PARTY AND THE NON-PARTY CONCERNED. HOWEVER, THE FOREGOING DOES NOT PRECLUDE A PARTY WHICH HAS BEEN REQUIRED TO PAY COMPENSATION UNDER SUCH A TREATY TO A NON-PARTY OR TO A NATURAL OR JURIDICAL PERSON IT MIGHT REPRESENT FROM INVOKING ANY RIGHTS IT MAY HAVE UNDER THAT TREATY AGAINST ANY OTHER PARTY, TO THE EXTENT THAT IT HAS NOT BEEN REIMBURSED BY THE ORGANIZATION IN ACCORDANCE WITH THIS ARTICLE WITHIN ONE YEAR OF NOTIFYING THE ORGANIZATION OF ITS CLAIM FOR REIMBURSEMENT.

C. IF A PARTY, IN ITS CAPACITY AS SUCH, IS REQUIRED BY A BINDING DECISION RENDERED BY A COMPETENT TRIBUNAL OR AS A RESULT OF A SETTLEMENT AGREED TO OR CONCURRED IN BY THE COUNCIL, TO PAY TO A NON-PARTY OR TO A NATURAL LIMITED OFFICIAL USE

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OR JURIDICAL PERSON IT MIGHT REPRESENT, ANY CLAIM, INCLUDING ANY COSTS OR EXPENSES ASSOCIATED THERWITH, WHICH ARISES OUT OF ANY ACT OR OBLIGATION OF THE ORGANIZATION CARRIED OUT OR INCURRED IN PURSUANCE OF THIS CONVENTION OR THE OPERATING AGREEMENT, THE CLAIM BEING BASED ON AN INTERNATIONAL AGREEMENT RELATING TO OUTER SPACE ADOPTED UNDER THE AUSPICES OF THE UNITED NATIONS AND IN FORCE BETWEEN THE PARTIES CONCERNED,

THE ORGANIZATION SHALL REIMBURSE THE PARTY TO THE
EXTENT THE PARTY HAS PAID THE CLAIM.

D. IF SUCH A CLAIM IS ASSERTED AGAINST A PARTY,
THAT PARTY, AS A CONDITION OF PAYMENT BY THE ORGANI-
ZATION, SHALL WITHOUT DELAY NOTIFY THE ORGANIZATION OF
THE CLAIM, AND SHALL AFFORD IT THE OPPORTUNITY TO
ADVISE ON OR TO CONDUCT THE DEFENCE OR OTHER DISPOSITION

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OF THE CLAIM AND, TO THE EXTENT PERMITTED BY THE LAW
OF THE JURISDICTION IN WHICH THE CLAIM IS BROUGHT, TO
BECOME A PARTY TO THE PROCEEDING EITHER WITH THE PARTY
OR IN SUBSTITUTION FOR IT.

4. AS A TOTALLY SEPARATE MATTER, SEVERAL DELEGATES HAVE
SUGGESTED A POTENTIAL COMPROMISE WITH RESPECT TO PARA 3

OF THE TEXT OF ARTICLE 26. THE PARA WOULD BE AMENDED TO INDICATE THAT A PARTY WHICH HAS HONORED A CLAIM, AS DESCRIBED IN PARA 3, WOULD BE REIMBURSED BY THE OTHER PARTIES REPEAT PARTIES. THE US DEL HAS SUGGESTED THAT THIS RESULT COULD BE OBTAINED BY ALL GOVERNMENTS SIGNING THE 1972 LIABILITY CONVENTION. OTHER DELEGATES, HOWEVER, HAVE POINTED OUT THAT THAT CONVENTION DOES NOT DEAL WITH THE EXACT DISTRIBUTION OF DAMAGES AMONG THE PARTIES TO THAT AGREEMENT. ASSUMING THAT IT WERE TO APPEAR THAT ACCEPTANCE BY THE US DEL OF THIS CONCEPT WOULD BREAK LIMITED OFFICIAL USE

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THE LOGJAM ON THIS ISSUE AND THAT THE US DEL IS SATISFIED THAT IT WOULD BE ADVANTAGEOUS FOR THE US GOVERNMENT TO CHANGE ITS POSITION ON ARTICLE 26, WE WOULD APPRECIATE KNOWING WHETHER THE DEPARTMENT CAN ACCEPT PARA 3 IF REDRAFTED TO CONTAIN THE CONCEPT INDICATED ABOVE.

5. IF IN FACT THE DEPARTMENT FEELS THAT WE CAN ACCEPT PARAGRAPHS 1, 2 AND 3 (AS AMENDED), PLEASE INDICATE THIS ALSO.

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